



# National Grocers Association

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January 21, 2003

Country of Origin  
Labeling Program,  
Agricultural Marketing  
Service,  
USDA STOP 0249,  
Room 2092-S,  
1400 Independence  
Avenue, SW.,  
Washington, DC 20250-0249

Office of Management  
and Budget, New  
Executive Office  
Building, 725 17<sup>th</sup>  
Street, NW., Room 725  
Washington, DC 20503,  
Attention: Desk Officer

Clearance Officer  
USDA-OCIO,  
Room 404-W  
Jamie L. Whitten  
Building, STOP  
7602, 1400  
Independence Ave.,  
SW., Washington,  
DC 202-50-7602

RE: Notice of request for emergency approval of a new information collection; 67 Fed. Reg. 70205, November 21, 2002. Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Authority of the Agricultural Marketing Act of 1946.

Dear Sirs:

The National Grocers Association (N.G.A.) takes this opportunity to express its opposition to the United States Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) request for approval from the Office of Management and Budget for emergency approval of the new information collection under the interim voluntary country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities, and peanuts under the Agricultural Marketing Act of 1946.

While these comments address the effect of USDA's request for emergency recordkeeping, N.G.A. strongly supports repeal of mandatory country of origin labeling due to the costs and burdens imposed on the industry, and ultimately consumers, while providing no increase in food safety. In cooperation with federal agencies, retailers and wholesalers already are able to rapidly recall products for food safety reasons. There is no reason to believe that this additional layer of complex and burdensome requirements for country of origin labeling will improve food safety. What this is really about is some domestic agricultural producers seeking to discredit foreign competitors and leaving independent retailers and wholesalers, as well as consumers, to pay the bill.

The National Grocers Association is a non-profit national trade association that represents exclusively the interests of independent community-focused retailers and

wholesalers. An independent, community-focused retailer is a privately-owned or controlled food retail company operating a variety of formats. A few are publicly traded, but with controlling shares held by the family, and others are employee-owned. Most independent operators are serviced by wholesale distributors while others may be partially or fully self-distributing.

### **Recordkeeping is unnecessary and premature.**

USDA specifically asks whether the recordkeeping is necessary for the proper operation of this voluntary program, including whether the information would have practical utility. N.G.A. strongly feels that the request for emergency recordkeeping is unnecessary, premature, and contrary to the premise of voluntary guidelines.

The voluntary guidelines and their preamble make it clear that "The Secretary will not perform surveillance of retailers, investigate complaints, prosecute violations, or otherwise enforce the provisions of the voluntary guidelines." As a result of USDA's stated voluntary nature of the guidelines and the non-enforcement authority of the statute, there is no need for emergency recordkeeping authority. Public comments are being solicited on this request for emergency recordkeeping, and the public comment period on the voluntary guidelines, including recordkeeping, is open until April 9, 2003. N.G.A. will submit comprehensive comments on the interim guidelines.

In addition, neither the request for emergency approval nor the voluntary guidelines themselves merit the imposition of recordkeeping on retailers, wholesalers and the rest of the industry.

Moreover, the agency's interim guidelines and proposed emergency recordkeeping only serve to highlight the burdens to be imposed on the industry and the reasons for repealing mandatory country of origin labeling. The regulatory maze and costs are counter to Administration's efforts to reduce government regulation and stimulate economic growth.

The request for emergency recordkeeping does not comply with the Paperwork Reduction Act of 1995 by disclosing that the proposed collection of information is necessary for the performance of the agency's functions. To the contrary, USDA's non-enforcement policy renders any recordkeeping meaningless. Nor does the notice for voluntary guidelines clarify the information that retailers, wholesalers and the rest of the industry are to collect.

The voluntary guidelines for recordkeeping provide the following:

- "A. Every person that prepares, stores, handles, or distributes a covered commodity for retail sale must keep records on the country of origin for a period of at least two years.

- B. Any person engaged in the business of supplying a covered commodity to retailer must make available information to the retailer indicating the country of origin of the covered commodity. Such persons, which include but are not limited to, producers, growers, handlers, packers, processors, and importers, must maintain auditable records documenting the origin of covered commodities. Self-certification by such persons is not sufficient.
- C. Retailers must ensure that a verifiable audit trail is maintained through contracts or other means, recognizing that suppliers throughout the production/marketing chain have a responsibility to maintain the necessary supporting records.
- D. All records must be legible and written in English, and may be maintained in either electronic or hard copy formats. To ensure accurate labeling and provide an auditable document trail, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold at that facility. In addition, records of any person who prepares, stores, handles, or distributes a covered commodity and/or comprehensive records maintained by the retailer may be located at points of distribution and sale, warehouses, or at central offices. Wherever maintained and in whatever format, these records must be readily accessible to review by the retailer and the Department.
- E. Records for domestically produced and/or processed products must clearly identify the location of the growers and production facilities. When similar covered commodities may be present from more than one country or different production regimes, a verifiable segregation plan must be in place. For imported commodities, records must provide clear product tracking from the port of entry into the United States.
- F. Recognizing retailers and their suppliers may have different accounting and inventory documentary systems; various forms of documentation will be acceptable provided the necessary tracking information is available."

Nowhere in the preamble or within the voluntary guidelines themselves does it specify the scope of the records on country of origin labeling required. For example, is one to assume that because USDA references the Perishable Agricultural Commodities Act (PACA) that retailers will be required to follow PACA recordkeeping regulations of the date of receipt of each kind of commodity, number of packages and quantities, price paid, evidence of agreement, or contract of purchase, bills of lading, paid bills and any other documents relating to the purchase of all covered commodities, including beef, lamb, pork, fish and peanuts? Will all these records now have to be revised to include the country of origin as well? Until USDA clarifies specifically the scope of the records to be maintained, there's clearly no merit for emergency recordkeeping. There's no clear guidance for compliance.

Furthermore, even if a retailer or other industry member were to make a voluntary country of origin claim for commodities like beef, pork, lamb, or fish, there is not a verifiable audit trail currently in existence. This illustrates even more the difficulties for retailers and wholesalers who will have to demand supplier verification under a mandatory program.

### **Recordkeeping costs are burdensome and excessive.**

USDA estimates that the recordkeeping costs being imposed on retailers and wholesalers is \$628 million for retailers and \$340 million for food handlers, including wholesalers. This includes estimates by USDA for start-up costs of \$62 million for retailers and \$80 million for food handlers. It is clear from the response from N.G.A. retailers and wholesalers that USDA has substantially underestimated the burdens and costs imposed in setting up the recordkeeping and maintaining records annually.

AMS estimates that it would require two days for a food handler and five days for a retailer to develop a recordkeeping system. Setting aside the lack of specificity for the records required, AMS substantially underestimates the time for developing a recordkeeping system, revising computer programs, and developing a storage system, especially in retail stores and food warehouses. The guidelines provide, "To ensure accurate labeling and provide an auditable document trail, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold at that facility." To require the maintenance of these records for two years in a retail store is a burdensome requirement which requires the development of a recordkeeping system, and establishment of storage space.

For food wholesalers, the AMS estimate of two days underestimates the complexity and the amount of time for grocery wholesalers, who serve hundreds to thousands of retail companies with potentially thousands of covered commodities, to establish and coordinate a recordkeeping system. Furthermore, to maintain records for one hour per week is a gross underestimate. Covered commodities are constantly coming in and out of food warehouses and being shipped to retail customers daily which will have to have country of origin information collected from suppliers and transmitted to retailers. Last year alone 22,000 new items were introduced to meet consumer demand.

The estimate of one hour per day for retailers to generate and maintain the required records is also wholly inadequate. Consider that a typical supermarket has more than 500 covered items in stock that turn daily in inventory. The required records will have to be not only maintained for storage, but to assure accuracy for future labeling compliance by personnel in produce, meat, seafood and other departments. N.G.A. is in the process of compiling survey information that goes beyond recordkeeping requirements to provide USDA comprehensive comments on the entire proposed voluntary guidelines. It is clear that USDA's estimate of the burden of recordkeeping requirements is too low.

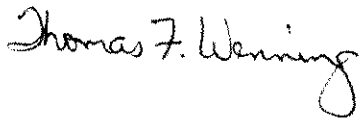
### **Ways to clarify records to be maintained.**

N.G.A. strongly recommends that USDA clarify for the industry the records to be kept and the information to be maintained as part of a "verifiable audit trail." As part of the comment period on the voluntary guidelines and rulemaking for mandatory programs AMS could provide more detailed examples of the records to be kept. Then public comments from retailers and wholesalers could more fully explain the effect of specific recordkeeping requirements. Only through such a process can the industry address AMS' recordkeeping policies.

Small businesses are at a substantial disadvantage when the government imposes layer upon layer of unnecessary recordkeeping requirements. The specific purpose of the Paperwork Reduction Act is to minimize the paperwork burden for small businesses.

In conclusion, N.G.A. urges OMB to deny the approval for emergency recordkeeping and AMS to eliminate its recordkeeping requirements under the voluntary guidelines so unnecessary burdens are not placed on retailers, wholesalers, and the rest of the American food industry.

Sincerely,

A handwritten signature in cursive script that reads "Thomas F. Wenning".

Thomas F. Wenning  
Senior Vice President and General Counsel